SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/28/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000075

FILED: _____

STATE OF ARIZONA

RICHARD E SERDEN

v.

ANDREW D HEITHAUS

CARMEN L FISCHER

FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC
TEMPE CITY COURT

MINUTE ENTRY

TEMPE CITY COURT

Cit. No. #01-511370-2

Charge: 1. CRIMINAL DAMAGE

DOB: 10/17/61

DOC: 06/05/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement with oral argument held on July 29, 2002. This decision is made within 30 days as

required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the Memoranda submitted by counsel and the record of proceedings and transcript from the Tempe City Court.

Factual and Procedural Background

On June 5, 2001, Tempe Police Officer Roget responded to a complaint from the Hawthorne Hotel that Andrew Heithaus admitted that he knocked over a vending machine. While responding to the complaint, but prior to encountering Mr. Heithaus, Officer Roget discovered that Mr. Heithaus had an outstanding felony warrant.

When Officer Roget and another officer arrived at the hotel they spoke with Appellant and his friend, Jay, in the vending room machine at the hotel.

On August 30, 2001, the State filed a complaint against Andrew Heithaus (Appellant) charging him with criminal damage involving a vending machine.

On January 14, 2002, Judge Sparks conducted a non-jury trial in the Tempe City Court, Division 2. During the trial, Appellant moved to suppress evidence gained by the investigating officer based on Appellant's claim that the officer conducted a custodial interrogation without advising Appellant of his *Miranda* rights. Judge Sparks found no violation of Appellant's constitutional rights and found Appellant guilty as charged. From said decision, Appellant brings this appeal. The only issue raised by the Appellant is that the trial judge erred in denying Appellant’s Motion to Suppress statements allegedly made in violation of Appellant’s Miranda rights.

Discussion

The decision made by the trial court involves a mixed question of law and fact.[1] Appellate courts must give deference to the trial judge's factual findings, including findings regarding or involving witnesses' credibility and the reasonableness of inferences drawn by witnesses.[2] This Court must review those factual findings for an abuse of discretion.[3] Only when a trial judge's factual finding, or inference drawn from that finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.[4] This Court must review *de Novo* the ultimate legal question whether Appellant's Fifth Amendment rights were violated.

In this case, the trial judge made the following findings:

> I don't find from the limited information I have in front of me that the custody is occurring until after the movement from the room and apparently that is where these statements are made so I don't think the Miranda rights or the provision that you must give the Miranda rights has been invoked yet because the custody has not been that restrained. Notwithstanding the officer's testimony, that statement is conclusory by the officer and looking at what it's based upon, I think the officer is wrong in his

[1] See, State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998).
[2] Id.
[3] State v. Rogers, 186 Ariz. 508, 924 P.2d 1027 (1996).
[4] State v. Chapple, 135 Ariz. 281, 660 P.2d 1208 (1983); State v. Magner, Supra.

> own assessment as to what he was doing. By his statement that he did take the arrest and didn't do anything until afterwards. I'm not going to find a violation of *Miranda*. The matter is still in.[5]

Police officers are clearly required by Federal and Arizona State law to give the Miranda[6] warnings when a suspect is interrogated while in custody.[7]

For purposes of determining whether the suspect is in custody and that interrogation must be preceded by Miranda warning, custody is an objective condition; and the subjective intent of the police to arrest a suspect is not, in itself, sufficient basis upon which to conclude that custody exists.[8] To determine if the Appellant was in custody and was interrogated while in custody, we must first define "in custody". There is a significant amount of case law that involves analysis of the meaning of "in custody" in a variety of circumstances. Because circumstances of each case will influence determination of whether an individual is in custody for purposes of administering Miranda warnings, factors strongly indicative of custody include: the site of questioning, whether indicia of arrest are present, the length and form of the interrogation, and whether the investigation had focused on accused.[9]

It is clear that the investigation had focused on Mr. Heithaus. This was only because Mr. Heithaus admitted he knocked over the vending machine. However, the evidence failed to establish the remaining three factors. First, Mr. Heithaus's pre-arrest statement was made in the vending machine room at a hotel where he was lodging, not a police station. Moreover,

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[5] Appellant's Memorandum p2.

[6] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)

[7] Miranda v. Arizona, supra; State v. Landrum, 112 Ariz. 555, 544 P.2d 664 (1996).

[8] State v. Kennedy, 116 Ariz. 566, 570 P.2d 508 (1977).

[9] State v. Cruz-Mata, 138 Ariz. 370, 674 P.2d 1368 (1983); State v. Carter, 145 Ariz. 101, 700 P.2d 488 (1985).

Appellant admitted that he had knocked over the vending machine.[10] Here, the site of the questioning was not coercive and it is clear from the Appellant's own voluntary disclosure that there was no compulsion. Had the questioning taken place at the police station that would have enhanced coerciveness. Second, there was no indicia of arrest present. Indicia of arrest include, handcuffs, locked doors, drawn guns, or search of defendant's person or belongings.[11] In this case, the police were simply conducting a preliminary investigation in the vending room area regarding a complaint that was dispatched to them. Officer Roget testified that there were no weapons drawn, the Appellant was not in handcuffs, and he did not have any CS spray or any other type of weapon.[12] Third, Officer Roget's exchange with Heithaus the from all accounts, including the Appellant's, was brief.[13] Officer Roget did not interrogate Mr. Heithaus, but made it clear that he was investigating the vending machine damage that had taken place at the hotel. Based on these factors, Mr. Heithaus was not in custody during the investigation of the vending machine damage. A reasonable person would not have felt "he was in custody or otherwise deprived of his freedom of action in any significant way"[14] during the exchange with Officer Roget about the vending machine.

The trial judge's findings are supported by the record. Though Appellant was being questioned, Miranda warnings are not required when a mere investigation is being conducted.[15] The questioning here was investigatory, in response to the hotel's complaint that Appellant had damaged a vending machine, and for purposes of determining whether Appellant might have committed the damage. And from the limited information this Court has received, it does not appear that Officer Roget went to the hotel for the purpose of arresting the Appellant for the vending

[10] Appellant's Memorandum p.5.
[11] State v. Riffle, 131 Ariz. 65, 638 P.2d 732 (1981).
[12] TR p. 6
[13] Appellant's Memorandum p.5.
[14] State v. Carter, 145 Ariz 101, 700 P.2d 488 (1985).
[15] State v. Melot, 108 Ariz. 527, 502 P.2d 1346 (1972).

machine damage. Due to no fault of the Officer, the Appellant did have a felony arrest warrant which the officer served after he conducted a preliminary investigation about the vending machine area. The Appellant was not arrested for the criminal damage.[16] The warrant was a wholly unrelated matter to the investigation of the vending machine damage at the hotel. This Court finds no error in the trial court's ruling.

IT IS THEREFORE ORDERED affirming the judgment and guilt and sentence imposed by the trial court.

IT IS FURTHER ORDERED remanding this case back to the Tempe City Court for all further and future proceedings in this case.

[16] TR p. 6